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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 THI THU THUY H.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

Case No. C19-103 RSM

ORDER REVERSING AND
REMANDING FOR AN AWARD OF
BENEFITS

13 Plaintiff seeks review of the denial of her application for Supplemental Security Income
14 (SSI). Plaintiff contends the ALJ erred by rejecting the opinion of James Czysz, Psy.D. Dkt. 12.
15 The Court agrees. As discussed below, the Court REVERSES the Commissioner's final decision
16 and REMANDS the matter for an award of benefits under sentence four of 42 U.S.C. § 405(g).

17 **BACKGROUND**

18 Plaintiff is currently 47 years old, is not able to communicate effectively in English, and
19 has worked as a meat trimmer. Dkt. 10, Admin. Record (AR) 1677. Plaintiff alleges disability
20 as of the December 7, 2011, application date. AR 69, 238. Plaintiff's application was denied
21 initially, on reconsideration, and by an ALJ decision in 2013. AR 67, 68, 93, 94, 26. On appeal
22 to this court, the case was remanded for further proceedings based on the parties' stipulation.
23 AR 715-16. After a 2015 ALJ decision denying benefits, Plaintiff appealed again to this court,

1 which reversed the decision for reasons including erroneously rejecting Dr. Czysz's opinions.
2 AR 654, 1357, 1359-62. After a 2016 ALJ decision again denying benefits, this court reversed
3 the decision again for reasons including erroneously rejecting Dr. Czysz's opinions. AR 1227,
4 1741, 1746-48. In November 2018, the ALJ issued the decision at issue here, finding Plaintiff
5 not disabled. AR 1647-78.

6 THE ALJ'S DECISION

7 Utilizing the five-step disability evaluation process,¹ the ALJ found:

8 **Step one:** Plaintiff has not engaged in substantial gainful activity since the December
9 2011 alleged onset date.

10 **Step two:** Plaintiff has the following severe impairments: major depressive disorder,
11 psychotic disorder, posttraumatic stress disorder (PTSD), cognitive disorder,
12 degenerative disc disease, and right 5th metacarpal fracture.

13 **Step three:** These impairments do not meet or equal the requirements of a listed
14 impairment.²

15 **Residual Functional Capacity:** Before April 4, 2013, Plaintiff could perform work at
16 all exertional levels. She could perform simple routine tasks, work superficially and
17 occasionally with the general public, work in the same room as coworkers but not in
18 coordination with them, and adapt to simple workplace changes. Reading English and
19 performing calculations could not have been the focus of the job.

20 Since April 4, 2013, Plaintiff can perform light work, with no sitting, standing, or
21 walking limitations. She can occasionally crawl and climb ladders, ropes, and scaffolds.
22 She can frequently perform fine fingering and gross handling with her right upper
23 extremity. She can perform simple routine tasks, work superficially and occasionally
with the general public, work in the same room as coworkers but not in coordination with
them, and adapt to simple workplace changes. Reading English and performing
calculations cannot be the focus of the job.

24 **Step four:** Before April 4, 2013, Plaintiff could perform past relevant work as a meat
trimmer.

25 Since April 4, 2013, Plaintiff cannot perform past relevant work.

26 **Step five:** As there are jobs that exist in significant numbers in the national economy that

27 ¹ 20 C.F.R. § 416.920.

28 ² 20 C.F.R. Part 404, Subpart P. Appendix 1.

1 Plaintiff can perform, she is not disabled.

2 AR 1649-78. The Appeals Council did not assume jurisdiction, making the ALJ's decision the
3 Commissioner's final decision.³

4 DISCUSSION

5 This Court may set aside the Commissioner's denial of Social Security benefits only if
6 the ALJ's decision is based on legal error or not supported by substantial evidence in the record
7 as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017). Each of an ALJ's findings
8 must be supported by substantial evidence. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir.
9 1998). "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
10 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
11 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
12 Cir. 1989). The ALJ is responsible for evaluating evidence, resolving conflicts in medical
13 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
14 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
15 neither reweigh the evidence nor substitute its judgment for that of the ALJ. *Thomas v.*
16 *Barnhart*, 278 F.3d 947, 954, 957 (9th Cir. 2002). When the evidence is susceptible to more
17 than one interpretation, the ALJ's interpretation must be upheld if rational. *Burch v. Barnhart*,
18 400 F.3d 676, 680-81 (9th Cir. 2005).

19 An ALJ may only reject the uncontradicted opinion of a treating or examining doctor by
20 giving "clear and convincing" reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).
21 Even if a treating or examining doctor's opinion is contradicted by another doctor's opinion, an
22 ALJ may only reject it by stating "specific and legitimate" reasons. *Id.* The ALJ can meet this

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³ The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.

1 standard by providing “a detailed and thorough summary of the facts and conflicting clinical
2 evidence, stating his interpretation thereof, and making findings.” *Id.* (citation omitted). “The
3 ALJ must do more than offer his conclusions. He must set forth his own interpretations and
4 explain why they, rather than the doctors’, are correct.” *Reddick*, 157 F.3d at 725.

5 Dr. Czysz provided opinions on a Psychological/Psychiatric Evaluation form in 2012,
6 2014, 2015, and 2017, each time after examining Plaintiff. AR 428, 1003, 1640, 2031. Each
7 time, Dr. Czysz diagnosed Plaintiff with major depressive disorder, recurrent, severe with
8 psychotic features. AR 426, 1001, 1638, 2029. Although the form changed over the years, Dr.
9 Czysz opined each time that Plaintiff was “not ... employable” or had marked impairments in
10 basic work requirements such as attendance and performing routine tasks without special
11 supervision. AR 427, 1003, 1640, 2030. The ALJ rejected all four opinions. AR 1671-74.

12 **A. January 2012 Opinion**

13 **1. Internal Consistency**

14 The ALJ found it inconsistent that Dr. Czysz determined that Plaintiff was “clearly
15 psychotic” yet checked “no” when asked if he observed auditory hallucinations. AR 1671 (citing
16 AR 428, 426). In the “Attitude and Behavior” category of the Mental Status Exam, Dr. Czysz
17 wrote that Plaintiff “was agitated, appeared frightened, and she is clearly psychotic.” AR 428.
18 In other words, Dr. Czysz reported that he observed psychotic attitudes or behaviors. The core
19 of psychosis is “loss of contact with reality.” *The American Heritage Dictionary for the English*
20 *Language* (4th ed. 2000), “psychosis.” That Dr. Czysz did not observe auditory hallucinations
21 would only be contradictory if auditory hallucinations were the only type of psychotic behavior.
22 The ALJ cites nothing in the record that would support such a conclusion and is not qualified to
23 draw such a conclusion by substituting her own medical judgment in place of Dr. Czysz’s. *See*

1 *Trevizo*, 871 F.3d at 683 (it is improper for an ALJ to substitute her judgment for a doctor’s).
2 Internal inconsistency was not a specific and legitimate reason to discount Dr. Czysz’s opinions.

3 **2. Conflict with Treatment Notes⁴**

4 The ALJ discounted Dr. Czysz’s observations that Plaintiff was confused, disorganized,
5 and paranoid and his opinion of disability because treatment notes did not indicate that Plaintiff’s
6 mental impairments were debilitating. AR 1671. The ALJ cited a treatment note stating that
7 Plaintiff was “alert and oriented with no unusual anxiety or depression.” AR 1671 (citing AR
8 466). First, no contradiction is apparent. Second, the treatment note reflects an extremely
9 cursory examination, unlike the detailed mental status examination and clinical interview Dr.
10 Czysz performed. The entirety of the treatment note’s psychiatric evaluation is: “Alert and
11 oriented. No unusual anxiety or evidence of depression.” AR 466. The provider did not
12 evaluate thought content and stream of mental activity, whereas Dr. Czysz observed that
13 Plaintiff’s thought content was paranoid and her stream of mental activity was confused and
14 disorganized. AR 428. This was not a specific and legitimate reason to discount Dr. Czysz’s
15 opinions.

16 The ALJ also noted that in contemporaneous treatment notes Plaintiff did not “report that
17 her depression, anxiety, hallucinations, or other mental issues were severely impacting her life.”
18 AR 1671. In support, the ALJ cited social work notes showing Plaintiff seeking help with issues
19 such as housing and Social Security benefits, and a treatment note from a medical visit for
20 abdominal pain. *See* AR 423-24, 468-69, 471-72, 482-84. The purpose of these visits was

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22 ⁴ The Commissioner declines to defend the ALJ’s reason that Plaintiff presented differently at
23 Dr. Czysz’s examination than in treatment notes, yet defends the underlying findings that
treatment notes did not match Dr. Czysz’s observations. *Compare* Dkt. 13 at 6 n. 3 *with id.* at 3-
4.

1 unrelated to Plaintiff's mental health and no psychiatric evaluation whatsoever was performed.

2 *Id.* These treatment notes do not contradict Dr. Czysz's observations or opinions, and thus do
3 not provide a specific and legitimate reason to discount them.

4 The Commissioner argues that because psychotic symptoms were not consistently
5 "reported to or observed by" treatment providers, the ALJ permissibly rejected Dr. Czysz's
6 opinions based on conflict with treatment notes. Dkt. 13 at 4. Several of those treatment notes
7 report visual and auditory hallucinations. *See* AR 493 (Plaintiff "sees 'fireflies', also has
8 conversation with herself on the phone at times"), 572 ("Has hallucinations at times."). In one, a
9 treatment provider interprets Plaintiff's report that people on the bus "question who she is talking
10 to" as audiovisual hallucinations. AR 624 ("AVH(s)"). Other treatment notes show clinical
11 assessments or diagnoses of psychosis or psychotic disorder. AR 412, 497, 569. Overall the
12 record supports, rather than contradicts, Dr. Czysz's opinions on psychosis.

13 The ALJ also found it "notable that [Plaintiff] was the primary caregiver of 4 children at
14 the time." AR 1671 (citing AR 490). This finding is not supported by substantial evidence. The
15 ALJ relied on a note showing that Plaintiff arrived at a walk-in appointment bringing
16 "[paperwork] requesting child support for her 4 children." AR 490. The ALJ appears to assume
17 that Plaintiff had to be the primary caregiver in order to receive child support, that she knew this,
18 and that she planned to accurately represent herself as primary caregiver in filling out the
19 paperwork, assumptions not supported by the record. This was not substantial evidence that
20 Plaintiff was the primary caregiver of four children and cannot support discounting Dr. Czysz's
21 opinions. Other evidence in the record shows that Plaintiff did not even see her children. *See*
22 AR 1100 (restraining order prevents her from seeing her children), 1146 (hardly sees her
23 children).

1 Conflict with concurrent treatment notes was not a specific and legitimate reason to
2 discount Dr. Czysz's opinions.

3 **3. Motivation**

4 The ALJ found that Plaintiff "made clear that she would rather receive SSI benefits
5 instead of working, viewing jobs as just a temporary event," and concluded "she did not want to
6 work." AR 1672 n. 1. These findings are based on a misinterpretation of the record. Asked if
7 she wanted to work, Plaintiff replied, "Yeah. I wish to have a job." AR 1122. Asked if she
8 would be happier working or getting SSI, she replied, "I think the SSI is, I prefer to have that.
9 And, the job is kind of temporary, sometimes they don't want to hire me." AR 1122. Plaintiff
10 linked the temporary nature of jobs to employers not wanting to hire her, not her own
11 preferences. Suspect motivation in seeking disability benefits was not a specific and legitimate
12 reason to discount Dr. Czysz's opinions.

13 **4. Record Review**

14 The ALJ rejected Dr. Czysz's opinions in part because "he did not indicate that he
15 reviewed any other record." AR 1672. The ALJ did not identify any information in the record
16 that would likely have changed Dr. Czysz's opinions. Dr. Czysz clearly relied on his own
17 examination of Plaintiff. Social Security regulations prioritize opinions based on examination
18 over opinions based on record review. 20 C.F.R. § 416.927(c)(1) ("Generally, we give more
19 weight to the medical opinion of a source who has examined you than to the medical opinion of a
20 medical source who has not examined you."). The Commissioner argues that review of the
21 record is a factor an ALJ may consider. Dkt. 13 at 5-6 (citing 20 C.F.R. § 416.927(c)(6)). While
22 it is a factor, the ALJ presented no reason it was significant in this case and no reason it should
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1 outweigh the priority given to examining doctors' opinions. Lack of record review was not a
2 specific and legitimate reason to discount Dr. Czysz's opinions.

3 **5. Interpreter**

4 Dr. Czysz observed that Plaintiff's stream of mental activity was confused and
5 disorganized, concluding that she "likely [had] some formal thought disorder, although a thought
6 disorder is difficult to diagnose through an interpreter." AR 428. He also noted that he could not
7 directly observe Plaintiff's insight and judgment because "[s]tandardized questions would not be
8 valid with this client due to her ESL status." AR 429.

9 The ALJ cited Dr. Czysz's caution in diagnosing a thought disorder due to using an
10 interpreter and concluded that "[o]ne would expect such difficulties to be present in multiple
11 other aspects of the evaluation, not just one area within the mental examination." AR 1672. Dr.
12 Czysz carefully noted which areas were affected by Plaintiff's English language barriers. The
13 ALJ is not permitted to substitute her medical judgment for Dr. Czysz's by assuming that other
14 areas were also affected. *See Trevizo*, 871 F.3d at 683. This was not a specific and legitimate
15 reason to discount Dr. Czysz's opinions.

16 **6. Impaired Concentration**

17 The ALJ rejected Dr. Czysz's opinion that Plaintiff's concentration was impaired because
18 it was based on Plaintiff's inability to do math or spell an English word, which the ALJ decided
19 was more likely explained by her never having gone to school. AR 1672. The ALJ's
20 interpretation is not supported by the record. Dr. Czysz wrote that Plaintiff's "capacity to
21 concentrate is impaired ... as measured by serial (7's) subtraction task[,] ... the capacity to spell
22 the word *World* backward[, and the] capacity to follow a three step instruction." AR 429.
23 Plaintiff was able to complete only two of the three steps. *Id.* The ALJ only questioned two of

1 Dr. Czysz's three measures of concentration. At minimum, Plaintiff's deficient performance on
2 the three-step instruction task supported Dr. Czysz's opinion of impaired concentration.⁵

3 **7. Medication**

4 The Commissioner argues that Plaintiff was not taking medication for her psychotic
5 symptoms, which undermines Dr. Czysz's opinions. Dkt. 13 at 4. The ALJ's decision does not
6 contain such an analysis and the Commissioner's contention is thus an improper post hoc
7 argument upon which the Court cannot rely. The Court reviews the ALJ's decision "based on
8 the reasoning and findings offered by the ALJ—not *post hoc* rationalizations that attempt to
9 intuit what the adjudicator may have been thinking." *Bray v. Comm'r of Soc. Sec. Admin.*, 554
10 F.3d 1219, 1225 (9th Cir. 1995).

11 Because none of the reasons the ALJ provided were specific, legitimate, and supported
12 by substantial evidence, the court concludes the ALJ erred by discounting Dr. Czysz's 2012
13 opinions.

14 **B. 2014 Opinions**

15 The ALJ discounted Dr. Czysz's 2014 opinions based on lack of record review, which is
16 insufficient, as discussed above. The ALJ's remaining reasons are also insufficient.

17 **1. Plaintiff's Presentation**

18 The ALJ concluded that Plaintiff presented herself to Dr. Czysz as more impaired than
19 she appeared in treatment notes. The ALJ's conclusion rests on two findings: that Plaintiff did
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21 ⁵ The Commissioner focuses on Dr. Czysz's attribution of Plaintiff's impaired concentration to
22 intellectual impairment and auditory hallucinations. *See* Dkt. 13 at 5. Regardless of the cause,
23 Dr. Czysz observed the concentration difficulty. The Commissioner's brief also treats
intellectual impairment, cognitive impairment, and thought disorder as interchangeable terms.
Id. This is a useful illustration of why ALJs and the Commissioner's counsel should not
substitute their medical judgment for doctors'.

1 fine in medical appointments without an interpreter, and that treatment notes do not describe
2 Plaintiff as “childlike, immature, frightened, etc., and one could reasonabl[y] assume that her
3 treating providers would have documented such significant observations.” AR 1672-73.

4 The first finding is unsupported by substantial evidence. The ALJ cites three treatment
5 notes stating “[t]he patient does not need an interpreter.” AR 1069, 1074, 1081.⁶ These
6 appointments were for the purpose of “checking in” or an “update.” *Id.* Very little
7 communication with Plaintiff took place. One appointment describes speaking only with
8 Plaintiff’s case manager. AR 1070. In another, Plaintiff “let [the provider] know that she has
9 made an appointment with a doctor here.” AR 1074. In the third, Plaintiff brought a notice that
10 her food stamp allotment would remain the same and the provider “explained this to her.” AR
11 1082. None of these treatment notes indicate that Plaintiff is capable of any more than the “poor
12 English” that Dr. Czysz observed. AR 1672 (citing AR 1003). And Plaintiff’s providers
13 indicated that Plaintiff’s English was poor. They typically used interpreters and described them
14 as “helpful.” *See, e.g.*, AR 1117, 2185. For appointments that involved significant
15 communication, interpreters were crucial. In one appointment for mental health services,
16 “[t]here was no Vietnamese interpreter present for the first 20 minutes of the appointment, which
17 made communication difficult.” AR 1127; *see also* AR 1113 (Before interpreter arrived,
18 “[t]rying to assess for suicide risk was very difficult as it was not clear if client understood the
19 question in English.”), 1139 (provider “did not understand much [Plaintiff] said”). The ALJ’s

22 ⁶ The ALJ’s two other citations appear to indicate an interpreter was used, although the
23 interpreter was not named. *Compare* AR 1066, 1077 (“Interpreter: Language: Vietnamese”) *with* AR 2644 (“Interpreter: Language: Vietnamese ... A Vietnamese phone interpreter was utilized during the exam”).

1 finding that Plaintiff's English was better than she presented to Dr. Czysz was not supported by
2 substantial evidence.

3 The ALJ's second finding, that providers' failure to describe Plaintiff as childlike,
4 immature, or frightened undermines Dr. Czysz's opinions, is also unsupported. Some treatment
5 notes accord with Dr. Czysz's observations. *See* AR 1113 (Plaintiff "frightened" by unfamiliar
6 visitors to her building), 1170 (Plaintiff "became visibly upset and tearful."). None contradict
7 his observations.

8 Inconsistency of Plaintiff's presentation was not a specific and legitimate reason to
9 discount Dr. Czysz's opinions.

10 **2. Ability to Learn**

11 Dr. Czysz opined that Plaintiff had a severe limitation on learning new tasks. AR 1002.
12 The ALJ discounted this opinion because she believed that Dr. Czysz relied on Plaintiff's "poor
13 English" to conclude "that she had an [in]ability to learn new material." AR 1673. The ALJ
14 reasoned that poor English and inability to learn "are not the same thing, and one does not
15 necessarily equate to the other." AR 1673. But Dr. Czysz's report does not show that he relied
16 on Plaintiff's poor English as the basis to conclude that she had a learning limitation. In
17 describing his observations of her speech, Dr. Czysz wrote that Plaintiff's "English is very poor
18 and this is likely a reflection of her inability to learn new material." AR 1003. In other words,
19 her poor ability to learn probably *caused* her poor English skills despite being in the United
20 States for well over a decade. The basis for the opined learning limitation, however, was Dr.
21 Czysz's testing revealing impaired memory, fund of knowledge, concentration, abstract thought,
22 insight and judgment. AR 1004. Reliance on Plaintiff's poor English was not a specific and
23 legitimate reason to discount Dr. Czysz's opinion.

1 **3. Inaccurate Information**

2 The ALJ discounted Dr. Czysz's opinions because he acknowledged that Plaintiff
3 provided inconsistent and contradictory information. AR 1673. This issue has been addressed in
4 a previous order from this court reversing the ALJ's 2016 decision.

5 The record here shows Dr. Czysz performed standardized testing, noted the issues
6 with the test results, and discussed problems with getting information from
7 [Plaintiff] including how she gave inconsistent and contradictory answers. Tr.
8 1000-05. In short, Dr. Czysz applied standard methods of assessing the mental
9 status of a patient, and explored [Plaintiff's] statements in arriving at his clinical
10 conclusions—there is nothing showing he simply accepted [Plaintiff's] statements
and rendered his opinion based solely on what she told him. Consequently,
because Dr. Czysz's opinions were not more heavily based on [Plaintiff's] self-
reports than on his own clinical observations and professional judgment, the ALJ
erred in rejecting his opinions. *See Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194,
[1199-1200] (9th Cir. 2008).

11 AR 1360. This reasoning applies to the ALJ's 2018 decision as well. That Plaintiff gave
12 inconsistent answers was not a specific and legitimate reason to discount Dr. Czysz's opinions.

13 Because none of the reasons the ALJ provided were specific, legitimate, and supported
14 by substantial evidence, the court concludes the ALJ erred by discounting Dr. Czysz's 2014
15 opinions.

16 **C. 2015 Opinions**

17 **1. Treatment Notes**

18 In addition to inadequate reasons discussed above, the ALJ discounted Dr. Czysz's 2015
19 opinions as inconsistent with a contemporaneous treatment note showing "neurological findings
20 were normal." AR 1673 (citing AR 1630-31). The cited neurological findings document intact
21 cranial nerves, extremity strength, sensation, and reflexes, and an absence of vertigo. AR 1631.
22 These simply are not comparable to Dr. Czysz's psychiatric testing, which covered speech,
23 attitude and behavior, mood, affect, thought process and content, memory, concentration,

1 abstract thought, and insight and judgment. AR 1640-41. Nothing in the treatment note
2 contradicts Dr. Czysz's findings or opinions. This was not a specific and legitimate reason to
3 discount Dr. Czysz's opinions.

4 **2. Lack of Treatment**

5 The ALJ found Plaintiff had no treatment between June 2014 and May 2016 and
6 concluded the lack of mental health treatment undermined Plaintiff's allegations. AR 1674.
7 First, the ALJ's finding appears to be factually incorrect. Plaintiff saw health care providers in
8 August 2014, October 2014, and December 2014. AR 1630, 1117-18, 1121-22, 1108-14.
9 Moreover, the ALJ did not explain how the lack of treatment would undermine Dr. Czysz's
10 opinions. A 17-month gap in treatment, over the course of several years of treatment, does not
11 undermine Dr. Czysz's observations and his conclusions based on those observations. Lack of
12 treatment was not a specific and legitimate reason to discount Dr. Czysz's opinions.

13 **3. Alcohol Use**

14 Dr. Czysz opined that Plaintiff's impairments were not primarily the result of alcohol or
15 drug use. AR 1640. He wrote that Plaintiff was currently "abusing alcohol, however, her
16 psychiatric symptoms preceded any substance use and continue during times of sustained
17 remission." AR 1640. The ALJ discounted Dr. Czysz's opinion because his determination "was
18 presumably based on his own faulty prior evaluation reports." AR 1674. Because Dr. Czysz's
19 prior reports were not faulty, this was not a specific and legitimate reason to discount Dr.
20 Czysz's opinion.

21 The Commissioner misrepresents circuit law in asserting that an ALJ may automatically
22 discount an examining psychologist's opinions "'because of [the claimant's] contemporaneous
23 substance abuse.'" Dkt. 13 at 8-9 (quoting *Andrews*, 53 F.3d at 1043). In *Andrews*, the ALJ

1 permissibly found unreliable a claimant who admitted he “had learned to ‘manipulate’ programs
2 and people” and, in turn, permissibly discounted the opinions of a psychologist that relied “to a
3 large extent” on the claimant’s self-reports. *Andrews*, 553 F.3d at 1043. Here, as discussed
4 above, Dr. Czysz’s opinions were not based to a large extent on Plaintiff’s self-reports.
5 Plaintiff’s alcohol use was not a specific and legitimate reason to discount Dr. Czysz’s opinions.

6 Because none of the reasons the ALJ provided were specific, legitimate, and supported
7 by substantial evidence, the court concludes the ALJ erred by discounting Dr. Czysz’s 2015
8 opinions.

9 **D. 2017 Opinions**

10 In addition to the insufficient reason of lack of record review discussed above, the ALJ
11 discounted Dr. Czysz’s 2017 opinions as inconsistent with contemporaneous treatment notes.
12 AR 1674. In a visit for headaches, Plaintiff has moderately impaired remote memory, poor
13 attention span, and “disjointed” concentration. AR 2647. These impairments are consistent with
14 Dr. Czysz’s findings. In three visits for hand pain, a cursory psychiatric screening found normal
15 orientation, mood, affect, insight, and judgment. AR 2630, 2636, 2641. These results, from
16 cursory mental screenings in the context of appointments focused on physical issues, are not
17 sufficient to undermine the findings of a mental health professional, based on his own thorough
18 examination focused on Plaintiff’s mental capacity, especially when the ALJ has shown such
19 extreme and unwarranted hostility to all of Dr. Czysz’s reports. *See* 20 C.F.R. § 416.927(c)(5)
20 (“We generally give more weight to the medical opinion of a specialist about medical issues
21 related to his or her area of specialty than to the medical opinion of a source who is not a
22 specialist.”). Because the ALJ provided no specific and legitimate reason, supported by
23

1 substantial evidence, the court concludes the ALJ erred by discounting Dr. Czysz's 2017
2 opinions.

3 **E. Scope of Remand**

4 Plaintiff requests the court remand for payment of benefits. Dkt. 12 at 17. In general, the
5 Court has "discretion to remand for further proceedings or to award benefits." *Marcia v.*
6 *Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). The Court may remand for further proceedings if
7 enhancement of the record would be useful. *See Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir.
8 2000). The Court may remand for benefits where (1) the record is fully developed and further
9 administrative proceedings would serve no useful purpose; (2) the ALJ fails to provide legally
10 sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3)
11 if the improperly discredited evidence were credited as true, the ALJ would be required to find
12 the claimant disabled on remand. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). The
13 Court has flexibility, however, "when the record as a whole creates serious doubt as to whether
14 the claimant is, in fact, disabled within the meaning of the Social Security Act." *Id.* at 1021.

15 All three conditions to remand for benefits are met. First, the record is fully developed
16 after four ALJ decisions, five hearings, and three remand orders from this court. The only
17 relevant conflict in the record is between Dr. Czysz's four opinions and the 2012 opinions of
18 state agency non-examining doctors. The non-examining doctors discounted Dr. Czysz's 2012
19 opinions for some of the same reasons as the ALJ, *i.e.*, that Dr. Czysz's opinions depended on
20 Plaintiff's non-credible self-reports and were unsupported by the record. *See* AR 78, 90, 101-02,
21 113. Because those were not legitimate reasons, and the Commissioner's regulations favor
22 examining over non-examining doctors' opinions, on remand there is no remaining conflict left
23 for the ALJ to resolve. *See* 20 C.F.R. § 416.927(c)(1).

1 Second, the ALJ failed to provide legally sufficient reasons for rejecting Dr. Czysz's
2 opinions, as discussed throughout this order. Third, if Dr. Czysz's opinions were credited as
3 true, the ALJ would be required to find Plaintiff disabled. The Commissioner does not dispute
4 this, arguing only that the state agency non-examining doctors' opinions create conflicts in the
5 record that the ALJ must resolve. Dkt. 13 at 11. Dr. Czysz consistently opined Plaintiff was not
6 employable; her basic work functions such as attendance and performance would be very
7 significantly impaired. AR 427, 1003, 1639-40, 2030. A vocational expert testified that even
8 one unexcused absence a month would lead to termination of employment. AR 64. "The basic
9 mental demands of competitive, remunerative, unskilled work include the abilities (on a
10 sustained basis) ... to deal with changes in a routine work setting." SSR 85-15 (S.S.A. 1985).
11 Dr. Czysz's opinions establish that Plaintiff is very significantly limited in the ability to adapt to
12 changes in a routine work setting. AR 427, 1002, 1639, 2030.

13 The only remaining question is whether the court should exercise discretion to remand
14 for benefits because the record as a whole creates serious doubt as to Plaintiff's disability. It
15 does not. The record is consistent with Dr. Czysz's observations and opinions. Yet in all four
16 ALJ decisions, there is an inexplicable refusal to see Dr. Czysz's opinions for what they are: a
17 qualified medical professional's application of his training and experience to the objective
18 observations he made in multiple examinations. This is a case where "[a]llowing the
19 Commissioner to decide the issue again would create an unfair 'heads we win; tails, let's play
20 again' system of disability benefits adjudication." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th
21 Cir. 2004). The Commissioner has had three chances to play again, and will not be given a
22 fourth chance.
23

1 **CONCLUSION**

2 For the foregoing reasons, the Commissioner's final decision is REVERSED and this
3 case is REMANDED under sentence four of 42 U.S.C. § 405(g) for an award of benefits.

4 DATED this 1st day of August 2019.

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6 RICARDO S. MARTINEZ
7 CHIEF UNITED STATES DISTRICT JUDGE
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